

REMARKS

Claims 1-43 are currently pending in the subject application and are presently under consideration. Claims 1-6, 12-20, 22, 25-29, 32, 36, 39, 42, and 43 have been amended as shown at pages 2-10 of the Reply.

Applicants' representative thanks the Examiner for the courtesies extended during the telephonic interview conducted on January 24, 2007. The Examiner was contacted to clarify an aspect of applicants' claimed invention in relation to the cited references. In particular, Theimer *et al.* was discussed with respect to teaching an expected utility. The examiner indicated that he believed the reference did not teach an expected utility that was based on a cost benefit determination. As such, limitations along this line have been incorporated into independent claims 1, 22, 39, 42, and 43.

Applicants' representative appreciates the Examiner's acknowledgement in the Office Action dated November 29, 2006 that claim 38 is allowable.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1-20, 22, 23, 25-37, 39 and 41-43 Under 35 U.S.C. §102(b)

Claims 1-20, 22, 23, 25-37, 39 and 41-43 stand rejected under 35 U.S.C. §102(b) as being anticipated by Theimer *et al.* (US 5,812,865). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. Theimer *et al.* does not teach each and every element of applicant's invention as recited in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 U.S.P.Q.2D 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The subject invention relates to analyzing data associated with parties involved in a communication attempt to identify the optimal one or more communication modalities to use in

establishing the communication between the parties. For instance, if an employee wanted to contact a coworker, the invention could analyze the coworker's current attention state and preferred modality of communication to select the appropriate communication modality to establish, such as e-mail, voicemail, instant messaging, or a future meeting. Furthermore, applicant's claimed invention can determine an expected utility with establishing the communication based upon data associated with the contactor, contactee, communication modality and the communication. The expected utility can be used, for example, to rank potential communication modalities or to determine if establishing the communication at this time is beneficial to the contactee. Based on the determined expected utility, it may be appropriate to delay establishing the communication until the expected utility is greater. In particular, independent claim 1 (and similarly recited in independent claims 22, 42 and 43) recites *the communication manager establishing a communication between the entities via at least one modality of the subset based at least upon determining an expected utility associated with the communication, the expected utility is based at least in part on the subset of the communication modalities and the first and second communication data sets, the expected utility is based at least in part on cost benefit determination.*

Theimer *et al.* does not teach or suggest the aforementioned novel aspects of applicant's invention as recited in the subject claims. The cited art discloses a system for establishing communication data paths between media devices based upon the context of users of the devices. Theimer *et al.* employs a method that examines user preference data that establishes rules for how the user should be contacted under various contexts. The system then employs various solutions to enforce the rules such as a rules engine or policy modules. The current context of the user will be examined when a communication attempt is made to the user and the appropriate rule will be employed to determine if the message should be delivered and the device to employ. Column 27, line 60 to column 28, line 8 is cited discussing a "best connection method" as suggesting an expected utility. However, this section of the reference discusses employing user defined rules to match the preferred connection methods of the sender and recipient to establish the communication. Again, this is merely identifying a matching communication modality, not determining an expected utility with respect to the transmitted communication. Theimer *et al.* takes an entirely rules based approach to establishing communication where if conditions of the rule are satisfied, the rule is executed. Although applicants' representative believes Theimer *et*

al. is silent regarding determining an expected utility associated with the communication, independent claims 1, 22, 42 and 43 have been amended to further recite that the expected utility is based upon a cost benefit determination. As indicated by the examiner during the phone interview, Theimer *et al.* fails to make any cost benefit determination. Therefore, Theimer *et al.* fails to teach or suggest the communication manager establishing a communication between the entities via at least one modality of the subset based at least upon determining an expected utility associated with the communication, the expected utility is based at least in part on the subset of the communication modalities and the first and second communication data sets, the expected utility is based at least in part on cost benefit determination.

Moreover, independent claim 39, recites *means for determining one or more expected utilities associated with a contact between the parties based, at least in part, on data associated with one or more contactors, data associated with one or more contactees and data associated with one or more communication channels, where at least one of the parties is a human being, the expected utility is based at least in part on cost associated with delaying the communication.* As discussed above, Theimer *et al.* is silent regarding determining an expected utility. Furthermore, the subject claim teaches that the expected utility is based upon a cost associated with delaying the communication, similar to the limitation of allowable independent claim 38. The cited reference fails to disclose cost as part of an expected utility determination. Therefore, Theimer *et al.* fails to disclose an expected utility based at least in part on cost associated with delaying the communication as recited in the subject claim.

In view of at least the foregoing discussion, applicant's representative respectfully submits that Theimer *et al.* fails to teach or suggest all limitations of applicant's invention as recited in independent claims 1 and 22, 39, 42 and 43 (and claims that respectfully depend there from), and thus fails to anticipate the subject claimed invention. Accordingly, this rejection should be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP221US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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